Indiana Office of Technology

IT Contract Manual

*presented for use in conjunction with
the OAG contract manual*

Revised **March 2007**

Table of Contents

PREFACE

Prior to contracting with an contractor or even releasing solicitation (*e.g.*, request for proposal) for goods or services that involve information technology (IT), it is recommended that you contact the Indiana Office of Technology (IOT) to see if there is an existing contract that you can leverage.

For other information about IOT and state IT generally, please see our website at www.IN.gov/iot.

PURPOSE AND OVERVIEW

To ensure that existing state investments are used, that new investments are made in accordance with enterprise standards, and that the State's buying power is maximized, IOT reviews information technology-related contracts. In order to assist with this review, IOT has created an IT Contract Manual specifically tailored to assist in the creation of contracts for IT services. It is meant to be used *after* you already have a basic understanding of State contracts and is a supplement to the OAG Contracts Manual. This manual groups IT contracts into eight main categories and presents terms to include, exclude, and consider when drafting and negotiating IT contracts. Sample language is included in the appendix.

Updates to this guide and requests for additional assistance may be submitted to contracts@iot.in.gov.

Though ensuring that a contract complies with the law is critical, ensuring that your contract reflects the "business" requirements of is equally important. To that end, following the suggested boilerplate is a Business Requirement Gathering process to assist contract drafters with standard templates and methods to collect, gather, analyze, and document business requirements. The intent is to improve facilitation of gathering "wants and needs" and translating them into business requirements that satisfy those "want and needs."

How to Read This Guide

This manual contains four main sections:

→ **IT contract suggestions, broken down into eight categories**. This manual is intentionally duplicative so that you may go to any of the eight categories of IT contracts and find everything you need for that particular type of contract.

→ **A general list of additional terms to exclude from your contracts**. You should review this; it applies to *all* categories of IT contracts.

→ **A sample language appendix**. Here you can find sample language for most items referenced above.

→ **A business requirement gathering process**. If you are still in the planning stages, this guides you through business considerations you need to make *prior* to the contract drafting phase.

CATEGORIES OF IT CONTRACTS

1. **Amendments** - amendments of IT contracts
2. **Application Development & Hosting**
3. **Services** - includes consulting, planning, and implementation
4. **Leasing Hardware**
5. **Maintenance & Licensing** - generally license addendums
6. **Procuring Service** - web service
7. **QPA**
8. **Support of Existing Application**

1. AMENDMENTS

Terms to Include

INFORMATION TECHNOLOGY ENTERPRISE ARCHITECTURE REQUIREMENTS CLAUSE

Make sure that the latest IT Architecture clause is included (it should not, among other things, reference an ITOC website). *See Sample Language.*

2. APPLICATION DEVELOPMENT & HOSTING

Terms to Include

BACKUP AND RECOVERY OF HOST

Address the physical location of the backup and process for recovery of the host server(s).

CODE OWNERSHIP

The contract should make clear which party owns any code, which is distinct from the data, created under the Contract. The State should make every effort to own the code, but sometimes contractors will not contract on that basis. (For example, Microsoft will always own the code to its Office suite.) In that event, your agency should license the code. *See Sample Language.*

CUSTOMER SUPPORT

Determine if this will be a service provided by the Contractor. If provided, determine the following:
→ If there will be an additional cost;
→ Available days and hours (in Eastern time zone);
→ Number of permitted calls per week/month/term of contract; and
→ If and how the Contractor or State will limit who is permitted to contact customer support.

DATA INTEGRITY/ENCRYPTION

If a contractor will have access to Social Security Numbers (SSNs) or credit card information, it is essential to have additional safeguards in place, including: notification of the SSN protection/disclosure laws and your Contractor's privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to the Contractor by the State under the terms of the contract.

Additional issues to consider and/or address in the contract:
→ What safeguard measures are in place to ensure security?
→ How many, or at what level or authority will the Contractor's employees have access to the data/servers?
→ If the Contractor has a privacy/confidential information policy, are the employees required to sign it?
→ Are there background checks for the Contractor's employees? How recently have staff been checked?

DELIVERABLES/SCOPE OF WORK

These should be listed and defined in appropriate detail, based on the complexity and cost of the project. At minimum, include performance requirements, permissible substitutions, and who/how/cost of replacing damaged products. Merely attaching a contractor's statement of work or proposal is considered inappropriate at any dollar amount.

DISASTER RECOVERY PLAN

If the business requirements demand it, a recovery plan should be provided by Contractor and incorporated into the contract. There should be contingencies for both accidental and intentional/negligent loss by a Contractor employee. *See Sample Language.*

Issues to consider include:
→ Rapid Response Plan -- if a file is lost or a program stops working, what happens, by whom, and how soon; how is the problem reported and to whom.

→ Disaster Recovery Site--what happens if Contractor's server is destroyed? Is backup in another state? Put the physical location of the backup into the contract.

INFORMATION TECHNOLOGY ENTERPRISE ARCHITECTURE REQUIREMENTS.

This clause in the standard boilerplate form should be included in all IT contracts. For any Contractor-requested deviation from the standard clause, IOT **strongly** encourages you to contact a member of IOT's contract review team in advance to determine if the deviation is permissible.

MAINTAINING THE SYSTEM

First ask, is the Contractor building a system that the State will maintain, or will the Contractor maintain it? If Contractor maintains, it is very difficult to chose another Contractor at the end of the contract. Address in the contract who will maintain the system, and what will happen if the State later chooses another source to maintain the system.

It is also good to cap the amendment price (no more than 5% increase in fees per year, or better yet, 50% of the annual Consumer Price Index increase).

REMEDIES

When something goes wrong, it is important for the parties to know what remedies are available to the party who has been wronged. Specific remedies can include but are not limited to:

→ <u>Cure</u>. If cure is included, include who will approve and how long the Contractor has to cure.

→ <u>Discounts</u>. These can be retroactive or only apply to future purchases.

→ <u>Exit strategy</u>. What happens if the contract must be terminated?

→ <u>Liquidated damages</u>. This can be related to equipment delivery and/or development.

→ <u>Refunds</u>.

SERVICE LEVEL AGREEMENTS

Include these to outline the level and type of service, the associated costs, and the incentives for performance that exceeds "acceptable" performance and disincentives for performance that does not meet "acceptable" performance. *See Sample Language.*

SOURCE CODE ESCROW

To ensure that your agency has easy access to code that is developed for your agency, you may want to include this. Determine who will pay for this or if payment will be split. Determine under what circumstances the source code will be released from escrow. *See Sample Language.*

TECHNICAL STANDARDS

Consider using standards implemented by the International Organization for Standardization -- http://www.iso.org/. Includes:

→ Security and/or authentication
→ Hosting

Privacy

Contractor should use proper level of encryption.

Patch management

Contractor should have proper patch management services and procedures.

Capacity planning

Contractor should have proper capacity planning services and procedures.

Backup recovery procedures

Contractor should perform backups on a regular basis so that no data is be lost and requires recreation. *See Sample Language.*

TECHNOLOGY INVESTMENTS

Contractor should have current technology in place and make reasonable upgrades.

TERMINATION

An IT contract should **always** contain termination for convenience. Whether terminating for convenience or default, a Contractor should be required to relinquish any work already completed for the State. This should include the return of data in readable format (this might sound simple, but if Contractor has a program that is more advanced than State has, we will get data back, but we will have no way of looking at it).

VIRUS PROTECTION

Contractor should certify it will not recklessly or knowingly introduce viruses onto the system, and shall promptly notify State if this occurs and work with State to remedy the infection. *See Sample Language.*

UPGRADES/MAINTENANCE

Determine the length of time Contractor, at no charge, will provide updates under the contract. Also, build in that Contractor shall provide renewable updates/maintenance at X price, if State so desires. *See Sample Language.*

Terms to Consider

Even if you cannot negotiate for exactly what you want, at least your contract can be clear. Consider the following issues and get the result in writing within the contract.

CONFIDENTIALITY

Outside of IC 5-14-3 prohibitions (and within the confines of IC 5-14-3), you should define what is confidential both from the Contractor and the State.

GUARANTEED MOST FAVORABLE TERMS

This ensures that the State gets the best rates, even after contract negotiations have closed. Sample language is included below, but should be specifically tailored to your type of contract. *See Sample Language.*

OWNERSHIP OF DATA, DOCUMENTS, AND MATERIALS

While it may be appropriate for a contractor to retain ownership of its code, it almost always required that the State own the data.

PROGRESS REPORTS

Will these be used? Will they be oral or in writing? Will they need approval by the State prior to payment? Please note that the sample progress reports section should be adapted to your particular needs. Only in *rare* cases would the entire clause below be used. *See Sample Language.*

3. SERVICES

Terms to Include

CODE OWNERSHIP

The contract should make clear which party owns any code, which is distinct from the data, created under the Contract. The State should make every effort to own the code, but sometimes contractors will not contract on that basis. (For example, Microsoft will always own the code to its Office suite.) In that event, your agency should license the code. *See Sample Language.*

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Additional issues to consider and/or address in the contract:
→ What safeguard measures are in place to ensure security?
→ How many, or at what level or authority will the Contractor's employees have access to the data/servers?
→ If the Contractor has a privacy/confidential information policy, are the employees required to sign it?
→ Are there background checks for the Contractor's employees? How recently have staff been checked?

DELIVERABLES/SCOPE OF WORK

These should be listed and defined in appropriate detail, based on the complexity and cost of the project. At minimum, include performance requirements, permissible substitutions, and who/how/cost of replacing damaged products. Merely attaching a contractor's statement of work or proposal is considered inappropriate at any dollar amount.

DELIVERABLES-BASED PAYMENTS

Use this rather than a labor-based system (i.e. hourly/weekly/monthly payments). What this means is you pay based on the amount of work completed. For example, if Contractor has completed 50% of the work, he is paid 50%, regardless of what percentage of time has been completed in the contract.

DISASTER RECOVERY PLAN

If the business requirements demand it, a recovery plan should be provided by Contractor and incorporated into the contract. There should be contingencies for both accidental and intentional/negligent loss by a Contractor employee. *See Sample Language.*

Issues to consider include:
→ Rapid Response Plan -- if a file is lost or a program stops working, what happens, by whom, and how soon; how is the problem reported and to whom.

→ Disaster Recovery Site--what happens if Contractor's server is destroyed? Is backup in another state? Put the physical location of the backup into the contract.

DUE DATES

Key milestones should be listed. Due "dates" can be a hard date like February 10, 2006 or a date extended from the contract like three months from contract execution.

With due dates, there should be an explanation of the consequence of Contractor's failure to meet the deadline (if the State has not unduly impeded progress). Consequences could include liquidated damages, reduced cost, or payment could simply be withheld until the milestone is met.

FINAL APPROVAL

Determine at the time of contracting if the Agency has final approval, if there is a mutual approval, or if you will use some other mechanism.

INFORMATION TECHNOLOGY ENTERPRISE ARCHITECTURE REQUIREMENTS

This clause in the standard boilerplate form should be included in all IT contracts. For any Contractor-requested deviation from the standard clause, IOT **strongly** encourages you to contact a member of IOT's contract review team in advance to determine if the deviation is permissible.

KEY PERSONS/WORK STANDARDS

Even if there is not one key person, include language that if the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant request. *See Sample Language.*

LICENSING STANDARDS

Determine what are the proper licensing standards or standards of competency. Consider Project

Management Institute (PMI) or industry standards.

OWNERSHIP

Determine this at the time of contracting. Attempt to use State boilerplate. Price may be adjusted accordingly. Ownership includes ownership of software **and** of State data. The State should always be the owner of State data.

REMEDIES

When something goes wrong, it is important for the parties to know what remedies are available to the party who has been wronged. Specific remedies can include but are not limited to:

→ Cure. If cure is included, include who will approve and how long the Contractor has to cure.

→ Discounts. These can be retroactive or only apply to future purchases.

→ Exit strategy. What happens if the contract must be terminated? Who pays for what? Who keeps any materials, codes, software? Will there be any continuity of services, and if so, will prices be negotiated up front, or upon termination?

→ Liquidated damages. This can be related to equipment delivery and/or development. These must be *reasonable* in comparison to actual losses, rather than a penalty.

→ Refunds. Determine up front a proper refund amount (ex. full refund, materials refund, full refund *plus* cost, if any, to hire someone else to complete the work).

SECURITY

What measures are in place to protect sensitive data?

SERVICE LEVEL AGREEMENTS

Include these to outline the level and type of service, the associated costs, and the incentives for performance that exceeds "acceptable" performance and disincentives for performance that does not meet "acceptable" performance. *See Sample Language.*

SOURCE CODE ESCROW

To ensure that your agency has easy access to code that is developed for your agency, you may want to include this. Determine who will pay for this or if payment will be split. Determine under what circumstances the source code will be released from escrow. *See Sample Language.*

TERMINATION

An IT contract should **always** contain termination for convenience. Whether terminating for convenience or default, a Contractor should be required to relinquish any work already completed for the State. This should include the return of data in readable format (this might sound simple, but if Contractor has a program that is more advanced than State has, we will get data back, but we will have no way of looking at it).

TRAVEL

Include travel rates (may include an internet link to the State travel information). In addition, determine at time of contracting what type of travel expenses will be included and excluded.

VIRUS PROTECTION

Contractor should certify it will not recklessly or knowingly introduce viruses onto the system, and shall promptly notify State if this occurs and work with State to remedy the infection. *See Sample Language.*

Terms to Consider

Even if you cannot negotiate for exactly what you want, at least your contract can be clear. Consider the following issues and get the result in writing within the contract.

CONFIDENTIALITY

Outside of IC 5-14-3 prohibitions (and within the confines of IC 5-14-3), you should define what is confidential both from the Contractor and the State.

EMPLOYMENT OPTION

Is it possible you will want to hire one of your Contractor's employees either during or at termination of the contract? If so, it is critical to include this clause. *See Sample Language.*

GUARANTEED MOST FAVORABLE TERMS

This ensures that the State gets the best rates, even after contract negotiations have closed. Sample language is included below, but should be specifically tailored to your type of contract. *See Sample Language.*

OWNERSHIP OF DATA, DOCUMENTS, AND MATERIALS

While it may be appropriate for a contractor to retain ownership of its code, it almost always required that the State own the data.

4. LEASING HARDWARE

Terms to Include

CUSTOMER SUPPORT

Determine if this will be a service provided by the Contractor. If provided, determine the following:
→ If there will be an additional cost;
→ Available days and hours (in Eastern time zone);
→ Number of permitted calls per week/month/term of contract; and
→ If and how the Contractor or State will limit who is permitted to contact customer support.

DELIVERABLES/SCOPE OF WORK

These should be listed and defined in appropriate detail, based on the complexity and cost of the project. At minimum, include performance requirements, permissible substitutions, and who/how/cost of replacing damaged products. Merely attaching a contractor's statement of work or proposal is considered inappropriate at any dollar amount.

DISCONTINUED PRODUCTS

If there is a chance your hardware may be discontinued or otherwise unavailable from the manufacturer during the life of the contract, include this clause. *See Sample Language.*

EQUIPMENT INSTALLATION AND USAGE

Your contract should include a paragraph which considers all the following subissues:

Equipment Description and Condition

Will the materials be new? Will the serial numbers or other identifiers be used on hardware?

Equipment or Services Enhancements

Can the Contractor equipment be modified, and if so, by other Contractors?

Equipment or Services Implementation Schedule

Determine at outset or denote that parties will agree on delivery due dates. Explain consequences of failure to meet delivery dates.

Equipment Site Preparation

Will Contractor install the equipment? If so, what, if anything, must the State do to prepare for installation? Who will pay to prepare the site?

Installation and Deinstallation

If the Contractor installs, what shall this entail? Who will uninstall the hardware?

Risk of Loss

Determine who bears risk of loss prior to delivery and/or installation. *See Sample Language.*

Shipping and Delivery

Who will be responsible for shipping and delivery, including costs? When/how will this occur? *See Sample Language.*

INFORMATION TECHNOLOGY ENTERPRISE ARCHITECTURE REQUIREMENTS

This standard boilerplate form should be included in all IT contracts. For any Contractor-requested deviation from the standard clause, IOT **strongly** encourages you to contact a member of IOT's contract review team in advance to determine if the deviation is permissible.

REMEDIES

When something goes wrong, it is important for the parties to know what remedies are available to the party who has been wronged. Specific remedies can include but are not limited to:

→ Cure. If cure is included, include who will approve and how long the Contractor has to cure.

→ Discounts. These can be retroactive or only apply to future purchases.

→ Exit strategy. What happens if the contract must be terminated?

→ Liquidated damages. This can be related to equipment delivery and/or development.

→ Refunds.

RISK OF LOSS

Determine who will bear risk of loss prior to delivery and/or installation. *See Sample Language.*

SCRUBBING/DELETING DATA

How will this be done to remove sensitive/protected data (*e.g.*, personal data such as SSNs or medical information)?

TECHNOLOGY INVESTMENTS

Contractor should have current technology in place and make reasonable upgrades.

VIRUS PROTECTION

Contractor should certify it will not recklessly or knowingly introduce viruses onto the system, and shall promptly notify State if this occurs and work with State to remedy the infection. *See Sample Language.*

Terms to Consider

GUARANTEED MOST FAVORABLE TERMS

This ensures that the State gets the best rates, even after contract negotiations have closed. Sample language is included below, but should be specifically tailored to your type of contract. *See Sample Language.*

5. MAINTENANCE & LICENSING

IOT uses a Hardware and/or Software Maintenance Addendum for support. A copy of this tailored addendum is available with the other State contract forms   This addendum is often incorporated and made part of the contractor's Form Contract. For maintenance and support of hardware and/or software, we require the vendor to provide a copy of vendor's terms and conditions. For hardware, this should include the type of service the vendor will provide for the equipment, during and after warranty, such as installs, repairs, exchanges, parts included and not included, upgrades, failures, etc. For software, it should include license details, number of users, installs, upgrades, testing periods, warranty, etc.

In the Hardware and/or Software Maintenance Addendum, we have added sections for the following:
1. Scope
2. Maintenance and Technical Support (what we can live with, if applicable)
   a. Hardware and/or Software Errors
   b. Upgrades
   c. Telephone Service
   d. Response Time/Coverage
   e. Support

Terms to Include

CUSTOMER SUPPORT

Determine if this will be a service provided by the Contractor. If provided, determine the following:
→ If there will be an additional cost;
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DELIVERABLES/SCOPE OF WORK

These should be listed and defined in appropriate detail, based on the complexity and cost of the project. At minimum, include performance requirements, permissible substitutions, and who/how/cost of replacing damaged products. Merely attaching a contractor's statement of work or proposal is considered inappropriate at any dollar amount.

DISCONTINUED PRODUCTS

If there is a chance your software may be discontinued or otherwise unavailable from the manufacturer during the life of the contract, include this clause.

INFORMATION TECHNOLOGY ENTERPRISE ARCHITECTURE REQUIREMENTS

This clause in the standard boilerplate form should be included in all IT contracts. For any Contractor-requested deviation from the standard clause, IOT **strongly** encourages you to contact a member of IOT's contract review team in advance to determine if the deviation is permissible.

LICENSE

Include the type of license and if, when, or under what circumstances licensing rights terminate.

PREPAYMENT

If prepayment is required, request proper payment language from IOT.

REMEDIES

When something goes wrong, it is important for the parties to know what remedies are available to the party who has been wronged. Specific remedies can include but are not limited to:
→ Cure. If cure is included, include who will approve and how long the Contractor has to cure.

→ Discounts. These can be retroactive or only apply to future purchases.

→ Exit strategy. What happens if the contract must be terminated?

→ Liquidated damages. This can be related to equipment delivery and/or development.

→ Refunds.

SERVICE LEVEL AGREEMENTS

Include these to outline the level and type of service, the associated costs, and the incentives for performance that exceeds "acceptable" performance and disincentives for performance that does not meet "acceptable" performance. *See Sample Language.*

VIRUS PROTECTION

Contractor should certify it will not recklessly or knowingly introduce viruses onto the system, and shall promptly notify State if this occurs and work with State to remedy the infection. *See Sample Language.*

Terms to Exclude

INDEMNIFICATION BY STATE

This is a violation of law and is **always** prohibited.

REINSTATEMENT FEES

Occasionally, Contractors attempt to apply "reinstatement fees" if the State cancels and then later wishes to reinstate maintenance. These fees should be limited to the actual cost (software/administrative) to the Contractor to update/reinstate maintenance. In NO CASE should the reinstatement fees be for over 100% of what would have been paid if maintenance was never canceled.

RIGHT OF ENTRY

Any Contractor-sponsored contract term giving the Contractor unlimited right of access on State premises in order to inspect licenses.

Terms to Consider

Even if you cannot negotiate for exactly what you want, at least your contract can be clear. Consider the following issues and get the result in writing within the contract.

ADDING/REMOVING LICENSES

How is this done -- true up, yearly? Is it possible to remove licenses? If so, what is the penalty?

CONFIDENTIALITY

Outside of IC 5-14-3 prohibitions (and within the confines of IC 5-14-3), you should define what is confidential both from the Contractor and the State. Only if the Contractor is insistent on this, if the Contractor prohibits disclosure of trade secrets and other "confidential" materials, a paragraph can be added that subjects all disclosure to IC 5-14-3 and requires Contractor to mark such information as "confidential". *See Sample Language.*

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PRICING STRUCTURE

For tiered pricing, what if you move to a higher (or lower) tier during the life of the contract? Will prices retroactively change, or only be applicable to new licenses? How are tiers calculated?

REMOVING/RESUMING MAINTENANCE

Can you remove maintenance? If so, is there a penalty if you later want to resume maintenance?

6. PROCURING SERVICE

Terms to Include

CUSTOMER SUPPORT

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7. QPA

Generally, QPA agreements are established by IDOA. When working with them, please incorporate or request IDOA incorporates the following.

Terms to Include

DELIVERABLES/SCOPE OF WORK

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Equipment or Services Implementation Schedule

Determine at outset or denote that parties will agree on delivery due dates. Explain consequences of failure to meet delivery dates.

Equipment Site Preparation

Will Contractor install the equipment? If so, what, if anything, must the State do to prepare for installation? Who will pay to prepare the site?

Installation and Deinstallation

If the Contractor installs, what shall this entail? Who will uninstall the hardware?

Risk of Loss

Determine bears risk of loss prior to delivery and/or installation. *See Sample Language.*

Shipping and Delivery

Who will be responsible for shipping and delivery, including costs? When/how will this occur? *See Sample Language.*

TERMINATION

An IT contract should **always** contain termination for convenience. Whether terminating for convenience or default, a Contractor should be required to relinquish any work already completed for the State. This should include the return of data in readable format (this might sound simple, but if Contractor has a program that is more advanced than State has, we will get data back, but we will have no way of looking at it).

VIRUS PROTECTION

Contractor should certify it will not recklessly or knowingly introduce viruses onto the system, and shall promptly notify State if this occurs and work with State to remedy the infection. *See Sample Language.*

Terms to Consider

Even if you cannot negotiate for exactly what you want, at least your contract can be clear. Consider the following issues and get the result in writing within the contract.

This ensures that the State gets the best rates, even after contract negotiations have closed. Sample language is included below, but should be specifically tailored to your type of contract. *See Sample Language.*

8. SUPPORT OF EXISTING APPLICATION

Terms to Include

CODE OWNERSHIP

The contract should make clear which party owns any code, which is distinct from the data, created under the Contract. The State should make every effort to own the code, but sometimes contractors will not contract on that basis. (For example, Microsoft will always own the code to its Office suite.) In that event, your agency should license the code. *See Sample Language.*

CUSTOMER SUPPORT

Determine if this will be a service provided by the Contractor. If provided, determine the following:
→ If there will be an additional cost;
→ Available days and hours (in Eastern time zone);
→ Number of permitted calls per week/month/term of contract; and
→ If and how the Contractor or State will limit who is permitted to contact customer support.

DATA INTEGRITY/ENCRYPTION

If a contractor will have access to Social Security Numbers (SSNs) or credit card information, it is essential to have additional safeguards in place, including: notification of the SSN protection/disclosure laws and your Contractor's privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to the Contractor by the State under the terms of the contract.

Additional issues to consider and/or address in the contract:
→ What safeguard measures are in place to ensure security?
→ How many, or at what level or authority will the Contractor's employees have access to the data/servers?
→ If the Contractor has a privacy/confidential information policy, are the employees required to sign it?
→ Are there background checks for the Contractor's employees? How recently have staff been checked?

DELIVERABLES/SCOPE OF WORK

These should be listed and defined in appropriate detail, based on the complexity and cost of the project. At minimum, include performance requirements, permissible substitutions, and who/how/cost of replacing damaged products. Merely attaching a contractor's statement of work or proposal is considered inappropriate at any dollar amount.

DISASTER RECOVERY PLAN

A recovery plan should be provided by Contractor and incorporated into the contract. This should include (1) what happens if data, software and/or hardware are destroyed, and (2) what happens if confidential information is released. There should be contingencies for both accidental and intentional/negligent loss by a Contractor employee. *See Sample Language.*

Issues to consider include:
→ Rapid Response Plan -- if a file is lost or a program stops working, what happens, by whom, and how soon? How is the problem reported and to whom?

→ Disaster Recovery Site--what happens if Contractor's server is destroyed? Is backup in another state? Put the physical location of the backup into the contract.

INFORMATION TECHNOLOGY ENTERPRISE ARCHITECTURE REQUIREMENTS

This clause in the standard boilerplate form should be included in all IT contracts. For any Contractor-requested deviation from the standard clause, IOT **strongly** encourages you to contact a member of IOT's contract review team in advance to determine if the deviation is permissible.

KEY PERSONS

Even if there is not one key person, include language that if the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant request.

LIQUIDATED DAMAGES

This can be related to equipment delivery and/or development.

REMEDIES

When something goes wrong, it is important for the parties to know what remedies are available to the party who has been wronged. Specific remedies can include but are not limited to:
→ Cure. If cure is included, include who will approve and how long the Contractor has to cure.

→ Discounts. These can be retroactive or only apply to future purchases.

→ Exit strategy. What happens if the contract must be terminated?

→ Liquidated damages. This can be related to equipment delivery and/or development.

→ Refunds.

SECURITY

What measures are in place to protect sensitive data?

SERVICE LEVEL AGREEMENTS

Include these to outline the level and type of service, the associated costs, and the incentives for performance that exceeds "acceptable" performance and disincentives for performance that does not meet "acceptable" performance. *See Sample Language.*

TERMINATION

An IT contract should **always** contain termination for convenience. Whether terminating for convenience or default, a Contractor should be required to relinquish any work already completed for the State. This should include the return of data in readable format (this might sound simple, but if Contractor has a program that is more advanced than State has, we will get data back, but we will have no way of looking at it).

In addition, the Contractor should not be permitted to retain a copy of any work done for the State or any confidential State data which was used during the contract period.

TRAVEL

Include travel rates (may include an internet link to the State travel information). In addition, determine at time of contracting what type of travel expenses will be included and excluded.

VIRUS PROTECTION

Contractor should certify it will not recklessly or knowingly introduce viruses onto the system, and shall promptly notify State if this occurs and work with State to remedy the infection. *See Sample Language.*

Terms to Consider

Even if you cannot negotiate for exactly what you want, at least your contract can be clear. Consider the following issues and get the result in writing within the contract.

EMPLOYMENT OPTION

Is it possible you will want to hire one of your Contractor's employees either during or at termination of the contract? If so, it is critical to include this clause. *See Sample Language.*

GUARANTEED MOST FAVORABLE TERMS

This ensures that the State gets the best rates, even after contract negotiations have closed. Sample language is included below, but should be specifically tailored to your type of contract. *See Sample Language.*

PROGRESS REPORTS

Will these be used? Will they be oral or in writing? Will they need approval by the State prior to payment? Please note that the sample progress reports section should be adapted to your particular needs. Only in *rare* cases would the entire clause below be used.   *See Sample Language.*

ADDITIONAL TERMS TO EXCLUDE, GENERALLY

AMBIGUOUS TERMS

If possible, avoid these or define them within the contract. Examples of ambiguous terms:
→ "Best effort"
→ "Generally excepted"
→ "Industry standards"
→ "Likely"
→ "Material" (unless "material" is defined to list out material terms of the contract)
→ "Reasonable"

PAYMENTS

→ Avoid advanced payment
→ Require detailed invoices and/or progress reports and require they be approved by State prior to payment

SAMPLE LANGUAGE APPENDIX

Audits

AUDITS REQUIRED BY LAW

Federal Audits

From time to time and as may be required by law, Contractor will submit to and participate in Audits, and generally fulfill any and all requests for production of Records by any governmental body having jurisdiction over or regulatory authority with respect to the services under this contract. This includes any federal departments or agencies or their agents, which regulate, oversee or govern any of the programs for which the State receives federal financial participation, and for which, pursuant to this Contract, Contractor has any duty or responsibility.

State Audits and Investigations

Contractor acknowledges that it may be required to submit to an Audit of funds paid through this Agreement and to any investigations into or with respect to the use of such funds as the State may request, including (i) an Audit conducted in accordance with IC 5-11-1 et seq. and audit guidelines specified by the State and (ii) an Audit conducted in accordance with OMB Circular A-133.

FINANCIAL AUDITS

Auditor Requests for Information

Contractor understands that the Auditor will make specific inquiries of Contractor's management for information, including financial information, relating to this Contract and the services provided herein. Contractor understands that as part of the Auditor's audit procedures, the Auditor may request, and, if requested, Contractor's management will provide to the Auditor, a representation letter that (i) acknowledges management's responsibility for the preparation of the financial statements and reports, (ii) acknowledges management's responsibility for compliance with laws, and (iii) affirms management's belief that the effects of any uncorrected financial statement or report misstatements aggregated by the Auditor during the current audit engagement and pertaining to the period presented are immaterial, both individually and in the aggregate, to the financial statements and reports taken as a whole.

Contractor Representations During Audit

Contractor understands and agrees that the Auditor will also request that Contractor's management confirm certain representations made to the Auditor during the audit. The responses to those inquiries, and the related written representations of management required by generally accepted auditing standards, are part of the evidential matter that the Auditor will rely on in forming its opinion on Contractor's financial statements and reports.

INVESTIGATIONAL AUDITS

Document Access and Inspection

Access to Records and System

Upon written request or authorization of the State, Contractor shall provide, and shall cause its Subcontractors to provide, the State with prompt, reasonable, and adequate access to any Records in Contractor's actual or constructive possession that are directly pertinent or reasonably related to the performance of this Contract. Contractor shall provide such access wherever Contractor, or any other person acting as agent for or on behalf Contractor in any way, maintains such records. Contractor further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this section. Contractor will require its Subcontractors to provide comparable access and accommodations. Nothing herein is intended to provide such additional officials and entities any independent rights to access the records which they do not otherwise possess.

Purpose of Access Request

Any request by the State for access to Records may be for any purpose related to this Agreement, including audit, financial management review, and contract administration including the making of copies, excerpts, or transcripts.

OPERATIONAL AUDITS

SOFTWARE AUDIT

As part of the Services, Contractor must use such audit software as the State or its designees may provide to Contractor from time to time during the Term. *See Sample Language.*

Code Ownership

At the State's written request, Contractor shall provide to the State, in a suitable electronic format, a fully commented copy of any and all Source Code and Object Code for any State software developed under the terms and conditions of this Contract. The State shall expressly have the right to use, modify, assign, copy and create Derivative Works based on any developed State software provided to the State pursuant to this Contract. Contractor agrees to ensure that any third party contractor providing developed State software shall agree to the terms and conditions of this paragraph.

Confidentiality – Trade Secrets
Add AFTER boilerplate confidentiality of data/information paragraph, if required by Contractor.

If the State receives a public records request that relates to information or documents in the possession of the State related to Contractor's (or any Subcontractor's) intellectual property, trade secrets, or other proprietary rights, the State shall promptly forward such request to Contractor for response. Contractor shall designate in writing which of those documents, if any, Contractor considers Confidential Information or otherwise excepted from public disclosure requirements and state with specificity the factual or legal basis for objecting to the disclosure of such documents. Contractor agrees and acknowledges that only information falling within a specific exemption permitted under IC 5-1 4-3-4 shall be designated as Confidential. Contractor shall mark each page of a document considered to be Confidential Information as "Confidential" or a similar designation. The State shall promptly review the basis for Contractor's claim of confidentiality, and shall not disclose the documents subject to Contractor's claim if the State concurs with such claim, provided that if the State determines that its obligation under public access law requires such disclosure, the State shall promptly notify Contractor of such determination and will not make such disclosure if Contractor (or a Subcontractor) obtains, prior to the expiration of the applicable timeframe to response to such request, either an opinion from the Indiana Public Access Counselor that such disclosure is not required or a protective order or other relief from any court of competent jurisdiction in the State of Indiana preventing such disclosure.

Disaster Recovery
Contractor shall provide a Continuity Plan. The Continuity plan shall provide, at minimum, the following:

(i)   provision of an alternate power source for uninterrupted services,

(ii)   designation of one or more facilities (each a "Disaster Recovery Site") or separate computer resources to which Contractor shall move the affected portion of any Services upon the occurrence of a Force Majeure event requiring such a relocation (including a Force Majeure event at a Disaster Recovery Site), which Disaster Recovery Sites for this Agreement shall be _____ ,

(iii)   equipment of each Disaster Recovery Site with data processing resources sufficient to provide all Services in reasonable compliance with the terms and conditions of the Contract, based on the circumstances of the Force Majeure event,

(iv)   specification of all procedures for the determination or declaration of a Force Majeure event, which determination or declaration may not be unreasonably withheld or delayed by either party. In the event of a Force Majeure event, Contractor shall use commercially reasonable efforts to resume delivery of the services (including via electronic access) utilizing the Disaster Recovery Site in the timeframe provided in the Continuity Plan; to the extent one or more Force Majeure events materially and adversely affects or prevents performance of the Continuity Plan, Contractor shall provide the State with a plan to resume delivery of the Services no later than seven (7) business bays thereafter at all Service Locations other than those at which the Force Majeure event has rendered impractical the delivery of the Services at such Service Locations; the State shall not unreasonably deny approval of the new plan.

Discontinued Products

In the event a product is discontinued by the manufacturer or is no longer available for purchase (such as products found to malfunction or products embroiled in trademark/copyright disputes), the State, at its sole discretion may cancel all or part of the contract or may allow the contractor to provide a substitute for the discontinued or unavailable item. The Contractor shall request permission to substitute a new product and provide the following:

1. A formal announcement from the manufacturer that the product has been discontinued or is no longer available.

2. Documentation from the manufacturer that names the replacement product.

3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications originally required under the contract.

4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all functions or uses of the discontinued product.

Pricing for the replacement shall be the same as or less than the contracted unit price of the discontinued product. The parties shall negotiate the new price in good faith based on ability of the new product to perform to contract specifications and inconvenience of the replacement.

Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

Equipment Installation and Usage

1) Equipment Description and Condition

All Equipment is to be newly manufactured, (not re-manufactured or refurbished), except for service repair or if manufacturer certified re-manufactured parts are requested by the State in writing.

2) Equipment Site Preparation

When installation is required, the State shall, at its own expense, prepare each site in accordance with the reasonable specifications set forth by the Contractor. The site preparation procedure and requirements shall be consistent with the RFP, which is hereby incorporated by reference. If the Contractor fails to inspect the site prior to delivery, the site shall be deemed approved for Equipment or services installation, and all further site preparation responsibility shall be that of the Contractor.

3) Shipping and Delivery

The Contractor shall be responsible for shipping and delivery of Equipment to the site indicated on the Notice to Proceed or Purchase Order.

4) Installation

When required, the Contractor shall be responsible for unpacking, uncrating, and installing the System, cleanup, and in all other respects making the Equipment or services ready for operational use. The Contractor shall certify when completed that the Equipment or services is ready for use and that all cabling is tested and certified in accordance with the RFP, which is hereby incorporated by reference.

5) Risk of Loss Prior to Installation

All risk of loss prior to delivery, installation and Equipment or services cutover shall be borne by the Contractor. When asked to only deliver Equipment to site, risk of loss will terminate when equipment is accepted at the delivery site by the authorized State representative.

6) Equipment or Services Implementation Schedule

The delivery and/or installation dates of the Equipment or services and the delivery dates will be set on a per job basis. If any of the Equipment or services components are not delivered and/or installed by the date specified, the delay will interfere with the Implementation Schedule resulting in significant loss and damage to the State. From the nature of the procurement, it would be impractical and extremely difficult to fix the actual damage sustained in the event of any such delay.

The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amount set forth in this paragraph, and both parties agree that in the event of any such delay, Contractor shall pay such amount as liquidated damages and not as a penalty. The State, at its option for amounts due the State as liquidated damages, may deduct such from any money payable to Contractor pursuant to the Contract, or may bill Contractor as a separate item. The amount of damages as it pertains to Contractor delays shall be the amount indicated below for each calendar day of delay in installation, but not for more than 180 calendar days:

> ➤ ½% of the QPA Release amount, per working day.

> **Comment [DLB1]:** Determine proper amount for your particular contract. This is a suggested amount.

If the delay is more than thirty (30) calendar days, then by written notice to Contractor, the State may terminate the right of Contractor to install, and may obtain substitute equipment. In this event, Contractor shall be liable for liquidated damages, in the amounts specified above until substitute equipment is installed, ready for use, or for 180 days from the installation date, whichever occurs first.

6) Equipment or Services Enhancements

a) The State may, at its sole discretion, upgrade, add to, or enhance System hardware or components with hardware or components of the same manufacturer but provided by another Contractor/distributor without voiding System or Contractor warranties as long as the alternate provider is authorized and/or certified by the manufacturer to sell and/or service the System.

b) The State, without prior approval of the Contractor, may connect the equipment herein contracted for to any equipment manufactured or supplied by other Contractors.

c) When such upgrades, additions, enhancements, or inter-system connections are made by the State or its Contractors or authorized agents: (A) The State shall be responsible for damage to the System caused by or resulting directly or indirectly from such upgrades, additions, enhancements or inter-system connections; (B) Contractor shall not be held responsible for defects in software provided such defects are caused by or result directly or indirectly from such alterations or attachments; (C) Contractor will not be liable for any performance degradation of the System caused by or resulting directly or indirectly from such alterations or attachments; (D) Contractor will not be responsible for the proper or efficient operation of, or the cost or effort to modify, any software affected directly or indirectly by such alterations or attachments; (E) Contractor will not be responsible for maintenance of the alterations or attachments; (F) Contractor shall not be responsible for any injury to persons or damage to property, real or personal, caused by or resulting directly or indirectly from such alterations or attachments.

Guaranteed Most Favorable Terms

All of the prices, terms, warranties and benefits granted by Contractor in this Contract are comparable to or better than the terms granted by Contractor to any other similarly situated state government customer. If Contractor, prior to the delivery of the Software, announces a price reduction or makes generally available to other customers more favorable terms or conditions with respect to the Software, such prices, terms, warranties or conditions shall be made available to State on the date the price reduction or change in terms and conditions became effective.

Information Technology Enterprise Architecture Requirements

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at http://iot.in.gov/architecture/. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

Progress Reports

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

Progress reports shall include, at minimum, summation of past activities; activities currently in development; recent accomplishments; identification of problems or issues that have or will create delays to scheduled milestone delivery; timeline revisions, if necessary; unscheduled activities and their effect on the project schedule or costs; activities scheduled for the next reporting period; and any additional reporting elements that may be added to the progress reports, as may be mutually agreed upon by the parties.

CONTRACT ADMINISTRATION

Contractor acknowledges that the State shall have the right to engage, at the State's expense, one or more third party contractors or State personnel (i) to provide to the State independent, objective assessments and ongoing oversight of the project/services during the Term to determine compliance with specified requirements of this Contract, (ii) to provide to the State recommendations based on experience and "best practices" to address potential and actual risks, and/or (iii) to otherwise assist the State in administering this Contract. Contractor acknowledges that the assessor(s) will be independent of Contractor and will report to and take direction solely from the State. Contractor shall cooperate fully with the assessor(s) in the performance of such duties.

OBSERVATION RIGHTS

The State shall have the right at all reasonable times to inspect Contractor's facilities utilized in providing the services or at which any records pertaining to the contract are maintained or stored.

CORRECTIVE ACTION

Contractor shall, at its expense, take all steps necessary and sufficient to cause its or a Subcontractor's compliance with or correction of any finding (or threatened finding) of noncompliance with any applicable law, audit requirement, or other requirement under the terms of this Contract, or requirement as established by applicable federal and state authorities. Such steps must include Contractor's delivery to the State of a Corrective Action Plan that addresses deficiencies identified in any Audit within thirty (30) days after Contractor's receipt of notice of any findings of noncompliance.

Risk of Loss Prior to Installation

All risk of loss prior to delivery, installation and Equipment or services cutover shall be borne by the Contractor. When asked to only deliver Equipment to site, risk of loss will terminate when equipment is accepted at the delivery site by the authorized State representative.

Service Level Agreement

Service Level Agreements shall be written in a way that can provide effective reporting. Tracking mechanisms should be available and clear to ensure compliance and that compensation is appropriate. In the event that the Contractor does not consistently meet its service level agreements, a breach of contract will occur, which, at the State's option, will constitute termination of Contract between the parties.

These are sample times and service levels.

Service Levels	Phone Response Time	On-Site Response	Principal Period of Maintenance (PPM)	Comments
Level A – 24x7 (2 Hour)	1 hr	2 hrs	7 days/week, 24 hrs a day	
Level B – 24x7 (4 Hour)	1 hr	4 hrs	7 days/week, 24 hrs a day	
Level C – Non-Mission Critical	1 hrs	6 hrs	5 days/week, Mon-Fri, 8:00 AM to 5:00 PM	Should Agency contact occur after 1:00 PM, Qualified Technician on-site response shall be either before 5:00 PM the day of Agency contact or by 9:00 AM the next business day (excluding State holidays)
Time and Material (T&M) – Mission Critical	1 hrs	4 hrs	Includes separate rate for Regular Business, Overtime, Premium Hours, and Travel	Rate based on .25 hourly period
Time and Material (T&M) – NBD	1 hrs	NBD	Includes separate rate for Regular Business, Overtime, Premium Hours, and Travel	Rate based on .25 hourly period.

Source Code Escrow

Contractor agrees to maintain an Escrow Agreement for the Software source code and related documentation for the benefit of the State during the term of the license. Contractor further guarantees that it will place a copy of revised or additional software source code and documentation with the Escrow Agent promptly after Contractor makes changes or additions to the Software and will notify State that it has done so. Contractor shall include State as a third party beneficiary to the Escrow Agreement at no charge to State. State shall be entitled to receive a copy of the software source code in the event that Contractor has completely ceased all business activities for a period of ninety (90) days or more, and a third party has not agreed to assume the responsibilities of this agreement. State use of the Contractor's source code shall be unlimited in the event of breach and State shall retain sole ownership of the source code.

Technical Standards

Contractor shall follow the standards implemented by the International Organization for Standardization, found at http://www.iso.org/, or a similar standardization body.

PRIVACY

Vendor shall agree to require of itself and other parties not less than 128-bit SSL encryption to protect web requests that contain:
   (i.) user credentials (username and password), and
   (ii.) sensitive information (social security numbers, personal information such as date of birth, etc.).

PATCH MANAGEMENT

Contractor shall describe its patch management services and procedures. State shall not unreasonably deny approval of the services and procedures.

CAPACITY PLANNING

Contractor shall describe its capacity planning services and procedures. State shall not unreasonably deny approval of the services and procedures.

BACKUP RECOVERY PROCEDURES

Contractor shall perform backups of the web, application, and database servers on a regular basis so that no data would be lost and require recreation. This shall include daily incremental backups and full weekly backups of all volumes of servers. Daily backups shall be retained by Contractor for one month and weekly backups shall be retained by Contractor for two years. Daily backups will be stored off-site by Contractor. System backups for each of the mentioned servers will be on a quarterly basis, with two additional during the year, for a total of 6 system backups per server.

Technology Investments

Contractor will make investments in technology as reasonably required from time to time to keep reasonably current the System, including Equipment, Software and/or other technologies provided by Contractor in performing the Services for the State, so that the State will receive the benefits of upgrades in technology through improved performance, functionality and recoverability, to the extent necessary for Contractor to provide the Services. Contractor will be proactive in identifying opportunities to implement new technologies that will improve the Services and support thereof.

Upgrades/Maintenance

Contractor shall provide to the State, at no charge, updates to the software created within the first X (X) months of contract execution. After X (X) months, the contractor shall offer renewable updates at an agreed upon price of $X per year. The state shall retain the right to decide whether to purchase the yearly upgrades.

Virus Protection

Contractor will not knowingly introduce, and will not knowingly permit the introduction by any Subcontractor of, any viruses, Trojan horses, worms, etc. into the Services or any equipment, peripherals or networks that are used in performing the Services during the course of providing the Services or otherwise performing its obligations under this Agreement. Contractor will promptly inform the State of any infections on the System or any computers, peripherals or network to which the System is attached or linked promptly after becoming aware of such infection. Contractor and State will work together to remedy any infections.

Work Standards

The Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request.

BUSINESS REQUIREMENT GATHERING PROCESS

The purpose of the Business Requirement Gathering process is to define standard templates and methods to collect, gather, analyze and document business requirements. The intent is to improve facilitation of gathering business areas wants and needs and translating them into business requirements that satisfy those needs.

Business Requirement Operational Definition

The identified specific business need within any segment of a business function that will accomplish a task such as-
- Remove a deficiency,
- Enhance a system or operation,
- Improve service, service operations or process flow,

It must be measurable, testable and validated by the requestor. The business need must also be scoped by the requestor and part of the scoping should be linking this back to the strategic objective, Macro or Micro objective or other initiative that it would support.

Gathering Business Requirements

Step 1- Link the business need to the strategic objective, project or business area priority. Determine the level of priority the business unit sees the need as having. Develop the scope, identify the subject matter experts and determine expected turn around time for the business requirement documentation. (Use project charter if available).

Step 2- Make an appointment with the subject matter expert (SME) to gather the first draft of requirements.

Step 3- Use the DTS Business Requirement Standardized form to state/document requirements. There are separate templates for policy and IT projects.

Step 4- Utilize the Issues Log to document items that may come up in the interview process that may need to be addressed prior to final business requirement documentation. Assign an owner and deadline to follow up and get resolution. Based on the situation, decided on the best vehicle for communication back to the BA of these results- email, phone, hard copy, etc.

Step 5- Make an appointment to review the compiled business requirements with the SME and make any necessary changes.

Step 6- Obtain final approval and sign off of business requirements from the requestor.

Step 7- Email the business requirements to the project manager.

Functional Requirements

Functional requirements are requirements that specify the actions or characteristics that are mandatory to meet the business need. This is what the business area wants, needs or thinks they need.

General- high level requirements.

Specific- document detailed requirements and define deliverables (include tangible goods or services). Every deliverable should be capable of being measured (price structure, time frames, and performance/quality) and the results analyzed and reported.

Security- define the users in the group and their roles to have permission granted. Consider regulatory security requirements such as HIPPA and privacy rules, and or financial regulations when defining security requirements. Define environmental factors that would apply to HIPPA regulations such as secured records, privacy related to end users or clients, etc.

Data- new information that should be collected. Include any known information about length, default value, valid values, use in business rules, data types and data standards, etc.

Conversion- identify any business data or values to be converted or are available to support business requirements (e.g. new screens, new fields, that support what is discovered in exception/errors category especially, etc). This information will feed into the existing change processes for each IT system.

Changes- identify any business process flows that will need to be changed or implemented; ensure these are addressed in the project plan and implementation plans.

Non-Functional Requirements- requirements that describe the parameters, structures, volumes or other needs that must be available to achieve successful implementation of the requirements.

Integration and Coordination: avoid sub-optimization. Look at the impact of any changes on the broader value stream. List all the areas or processes that are affected by this business need and ensure that proposed change does not negatively impact the overall performance of the program area or related program areas with which the change interacts.

Implementation Planning- is a pilot needed to test the changes before a full roll out occurs? Will a phased in approach be needed? New equipment or resources needed?

Service Level Agreements- Service Level Agreements (SLA's) are used to manage a contract. They are the portion of a service contract in which a certain level of service is agreed. The SLA's define the expectations in terms of how the vendor or business unit will be measured against pre-determined levels which must be tied back to a deliverable in the requirements section. These targets and metrics must be clearly specified and then reviewed regularly by the business unit and the vendor.   SLA's can be written two ways – Positive (If contractor complies, a bonus is given) or Negative (Contractor must comply, or a penalty is accessed). Currently in the State, penalties are not enforceable in court. Therefore, it is suggested that the SLA's be structured in a positive manner. The business unit will have the ultimate influence in this process.

- Prioritize the requirements by impact IF the requirement is not met.
- The greater the impact, the greater the need for a service level agreement.
- The incentive/penalty for a deliverable must be equivalent to the impact.

Examples of positive SLA's
- Lower fixed prices with incentives to perform work:
  - In a measurable time period.
  - Of a measurable quality.
  - For reduced costs.
- Example Case
  - Vendor A wants $100,000 to perform Service B.
  - The State needs service B performed without interruption between 8 a.m. and 5 p.m.
  Alternative Contract
  - Vendor A is paid $50,000 to perform Service B with a $50,000 incentive if service B has no gap in performance between 8 am and 5 pm.
- Example Case –
  - Vendor A wants $100 an hour to perform B service.
  - Vendor A costs are $75 per hour with $25 per hour in profit.
  - Vendor A estimates that the work can be performed in 1000 hours an completed by July 31, 2007.
  Alternative Contract
  - The state contracts with vendor A for the cost per hour.
  - If the vendor completes the project by July 31, 2007 and keeps the hours below the following thresholds, the vendor receives the applicable bonus. The vendor only receives one bonus.
    - 1000 Hours – $20,000 – total contract $95,000
    - 900 Hours – $27,000 – total contract $94,500
    - 800 Hours - $33,000 – total contract $93,000

Key Performance Indicators - define the current and target metrics or measurements that will indicate success for the project using quality indicators and quantifiers. Quality Indicators are the items to be measured to signify success. Quantifiers measure quality indicators. -

Quality Indicators	*Quantifiers*
Complaints	#, % of time spent handling, frequency, type, # of people involved in responding, response time
Completion of activity	Time, accuracy, schedule, consistency
Cost	Type, fluctuation, profit margin, amount
Customer Satisfaction	Compliments, good press
Downtime	# of hours, % of time, cause
Output	#, time, % meeting specifications, error rates, failures, rework.
Rework	# of hours, % of time spent, cost of materials
Timeliness standards	Cycle time, lead time, process time

Usability- define accessibility, functionality, aesthetics, and ease of use/ease of learning.

Scalability- define how the solution must respond efficiently to business growth expectations. What is the expected growth in terms of time, magnitude, location? Consider defining both current and future state. Areas to consider include number of physical locations, number of users by location, growth rate.

Infrastructure- define the physical deployment needs of the business functionality to the users. Requirements should include the need for new workstations, voice response, connectivity, etc.

Process Improvement - begin to define what it will take to easily implement this new business process without any service breaks to the customer or end user.

User Acceptance Testing - define the high-level acceptance testing components to expand during detailed acceptance test planning. This information will be used as input to develop acceptance test plans and is meant to be high-level information to provide a framework or starting point for the development of acceptance test plans.

Identify business areas that should be involved in User Acceptance Testing. Determine major business processes and/or scenarios to be tested. Define customer expectations in terms of test data- production or mocked up, how much data to test - a month, two months, a year, and acceptable pass/fail criteria.

IT Project Name_____

Origin of Request (Requestor of business requirements)_____

Date needed by:_____ Date of Interview:_____

Please complete the following:

General High Level Requirements (scope of work):

Specific Detailed Requirements:

Resources Identified:

Reporting:

Security:

Usability:

Service Level Agreements:

Key performance Indicators:

Metric	Current Performance	Target

Scalability:

Infrastructure:

Process Improvement:

Integration and Coordination:

User Acceptance Testing:

NOTES: